

## FCC MAIL SECTION

Before the  
Federal Communications Commission  
JAN 11 8 52 AM '93  
Washington, DC 20554

DISPATCHED BY 92-299 ✓

In the Matter of

Amendment of Section 73.606(b). RM-8049  
Table of Allotments.  
TV Broadcast Stations.  
(Appleton, New London and  
Suring, Wisconsin)

## NOTICE OF PROPOSED RULE MAKING

Adopted: December 8, 1992; Released: January 8, 1993

Comment Date: March 1, 1993

Reply Comment Date: March 16, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Wisconsin Voice of Christian Youth, Inc. ("petitioner"), licensee of Television Station WSCO, Channel 14, Suring, Wisconsin. Petitioner seeks to reallocate Channel 14 to either Appleton, Wisconsin, or New London, Wisconsin, and to modify its authorization accordingly, pursuant to Commission Rule 1.420(i).<sup>1</sup>

2. Petitioner argues that Suring, a community of 581 persons,<sup>2</sup> is unable to support a full-service television station, and that as a result, it is unable to meet the station's

financial needs. Petitioner notes that it had been operating Station WSCO with a low power transmitter pursuant to special temporary authority, but the station is currently off the air.<sup>3</sup>

3. In requesting the change of community, petitioner notes that Appleton (population 56,780) currently has one licensed television service, Station WXGZ, Channel 32. Petitioner includes an engineering statement which shows that the proposed change in community will allow the petitioner to upgrade Station WSCO's facilities to provide service to 662,390 people, as opposed to the 275,275 persons served by the station at its present site. Petitioner states that the move would create a gray area of 389 square kilometers with a population of 776 persons, and an area of 113 square kilometers and 140 persons with two reception services. Alternatively, petitioner states that it would seek the reallocation of Station WSCO to New London, Wisconsin (population 6,658), as that community's first local transmission service. Petitioner does not indicate whether the New London proposal would create a gray area.

4. Petitioner acknowledges that both Suring and Appleton are within the freeze area of Milwaukee, Wisconsin.<sup>4</sup> Petitioner argues that the freeze does not preclude the requested change in Station WSCO's community of license, as the *Freeze Order* explicitly stated that "the freeze on petitions to amend the TV Table of Allotments and construction permit applications for vacant television allotments will not apply to changes requested by existing stations."<sup>5</sup> Since Station WSCO is an existing station, petitioner argues, the *Freeze Order* by its own terms permits consideration of this petition. Petitioner further concludes that since the requested change does not result in any real decrease in broadcast spectrum available for new technologies in the Milwaukee area, the underlying rationale for the freeze is not applicable to the proposed change. As an alternative, petitioner states that if the freeze is deemed applicable here, it should be granted a waiver and allowed to pursue its proposal.

<sup>1</sup> This petition for rule making was originally dismissed by letter on the grounds that the proposal would not result in a preferential distribution of facilities under our allotment priorities and policies. The letter noted that this proposal would remove Suring's only local transmission service. See Letter from Chief, Allocations Branch, Policy and Rules Division, to counsel for Wisconsin Voice for Christian Youth, Inc. (July 28, 1989). Petitioner filed an appeal of the letter dismissal and again requested the initiation of a rule making proceeding.

After petitioner filed its appeal, the Commission stated that waivers of the prohibition on removal of a community's only local transmission service would be considered in conjunction with petitions to change community of license. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)* ("Community of License MO&O"), 5 FCC Rcd 7094, 7096 (1990). Therefore, we now believe that seeking additional comment on petitioner's proposal is warranted. We issue this Notice and will dismiss petitioner's petition for reconsideration as moot at the termination of this proceeding. We will treat petitioner's petition for reconsideration as comments to this proceeding. We note that Aries Telecommunications Corporation ("Aries"), licensee of Television Station WGBA, Channel 26, Green Bay, Wisconsin, filed an

opposition to the petition for reconsideration. We will consider the opposition in conjunction with the final resolution of this proceeding. Aries will be served with a copy of this Notice.

<sup>2</sup> Population figures are from the 1990 U.S. Census, unless otherwise indicated.

<sup>3</sup> By letter dated July 11, 1991, WSCO informed the Commission that it had to suspend station operations due to circumstances beyond its control. WSCO has sought authority to remain silent pending the outcome of this proceeding.

<sup>4</sup> See *Order, Advanced Television Systems and Their Impact on the Existing Television Service ("Freeze Order")*, 52 Fed. Reg. 28346, published July 29, 1987. The *Freeze Order* states that the Commission will not accept applications for construction permits for vacant television allotments within the minimum co-channel separation of thirty cities, including Milwaukee, pending completion of the advanced television proceeding.

<sup>5</sup> Petitioner paraphrased the language from the *Freeze Order*. More accurately, the *Freeze Order* explicitly stated that "No petitions to amend the table will be accepted for these areas. Further, construction permit applications for vacant television allotments in these areas will not be accepted. This freeze, however, will not apply to changes requested by existing stations. Moreover, applications and petitions for rule making already on file will continue to be processed as usual."

5. We believe the public interest would be served by soliciting comment on petitioner's proposal. While this proposal would remove the sole local television transmission service from Suring, it would permit the continuing operation of Station WSCO as a full service station. Otherwise, petitioner claims, the station may not go back on the air. If Channel 14 is allotted to Appleton, it would enable Station WSCO to provide a second local commercial television transmission service to a much larger community, and reception service to more than twice as many people as can be served from its current location.<sup>6</sup> If petitioner pursues the change at New London, the proposal would provide a first local television transmission service to that community. We request that petitioner specify which proposal it will pursue.

6. Although the *Community of License MO&O* restricts the removal of a community's sole local broadcast service, that document also states that a waiver of the prohibition will be considered "in the rare circumstances where removal of a local service might serve the public interest." *Id.*, 5 FCC Rcd 7096. As an example, we noted that we might consider removal of a sole local transmission service if reallocation would provide a first reception service to a significantly sized population, a higher priority under our television allotment criteria. In general, we do not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first or second local transmission service to another community. In this case, petitioner maintains removal of Station WSCO from Suring will ensure the continued operation of the station, and will ultimately provide reception service to twice as many people as are currently served. We request comment as to any other public interest benefits that may result from this proposal.

7. The *Community of License MO&O* stated that the public has a legitimate expectation that existing service will continue, and this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service. This proposal would remove Suring's only local transmission service. In addition, the proposal may seriously affect reception service in some areas, as it would create a gray area with a population of 776 persons and an area of 140 persons with two reception services. Petitioner notes that while there is no cable television in these areas, it can be assumed that some of the residents receive services by using high antennas or satellite dishes, and therefore the effect of the proposed Station WSCO move on reception service would be minimal. On the other hand, we recognize that denial of this proposal could lead to Station WSCO remaining off the air. We request petitioner to submit additional information

regarding any possible disruption regarding removal of Suring's local transmission service and how that disruption can be minimized. We also request information regarding the availability of reception services in the gain and loss areas following a move to either Appleton or New London, the total population within each area, and the reception services available within Station WSCO's current service area.

8. We tentatively conclude that the *Freeze Order* applies in instances when, as here, a television licensee or permittee seeks to change its community of license and facilities to a site closer to a freeze area. The *Freeze Order* was adopted in order to preserve spectrum options in areas where the Commission believed that additional station assignments would unduly restrict possibilities for providing additional spectrum for advanced television. If a television station was permitted to change its channel to a new community of license and relocate its transmitter site closer to a restricted area, the intent of the *Freeze Order* may be defeated. In this case, the freeze area extends to 248.6 kilometers (154.5 miles) from Milwaukee. The present site of Channel 14 at Suring is 220 kilometers (137 miles) from Milwaukee. The proposed site for Channel 14 at Appleton is 164.9 kilometers (102.5 miles) from Milwaukee, and the proposed site for Channel 14 at New London is 159 kilometers (98.8 miles) from Milwaukee. However, as noted in the *Freeze Order*, the Commission will consider waiver requests for applicants which provide compelling reasons why the freeze should not apply to their particular situations or class of station. We request comment as to why the Commission should, or should not, grant petitioner's request for waiver in this instance. We note however, that we remain concerned that the relocating of Channel 14 could limit our ability to identify a new channel for all broadcasters eligible for an advanced television channel. Accordingly, we will consider the needs of our advanced television allotment process in deciding whether to permit the relocation of Channel 14.

9. Television Channel 14 is adjacent to spectrum allocated to various land mobile radio services, including public safety services. Licensees who seek to increase the effective radiated power or change the transmitting location of an existing Channel 14 station are subject to special provisions of §73.687(e)(3) and (4) regarding the protection of adjacent land mobile facilities.<sup>7</sup>

10. Finally, we request petitioner to submit any additional information as to the overall public interest benefits that would flow from grant of this proposal.

11. Channel 14 can be reallocated from Suring, Wisconsin to Appleton, Wisconsin, with a minus offset<sup>8</sup> consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 24.9 kilometers (15.5 miles) north.<sup>9</sup> Alternatively, Suring Channel

<sup>6</sup> The television allotment priorities are (1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice of at least two television services to all parts of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Sixth Report and Order*, 41 FCC 148, 167 (1952).

<sup>7</sup> See *In the Matter of Resolution of Interference Between UHF Channels 14 and Adjacent-Channel Land Mobile Operations* 6 FCC Rcd 5148 (1991), *recon. pending*.

<sup>8</sup> "A station with a 'plus' or 'minus' offset is required to operate with its carrier frequency 10 kHz above or below the normal carrier frequency. A different offset between two television stations reduces interference makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin*, 3 FCC Rcd 6765 n.1 (1988).

<sup>9</sup> The coordinates for Channel 14 at Appleton are North Latitude 44-29-00 and West Longitude 88-22-30.

14 can be reallocated to New London, Wisconsin, with a minus offset consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 9.3 kilometers (5.8 miles) east.<sup>10</sup> Either proposal requires a change in the offset for vacant Channel 14, Joliet, Illinois, from a minus to a plus offset.<sup>11</sup> Since Appleton and New London are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for these allotments. In addition, we propose to modify the authorization of Station WSCO(TV) to specify Appleton or New London in lieu of Suring pursuant to Commission Rule 1.420(i).

12. Accordingly, we seek comments on the proposal to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the following communities:

#### Option 1

City	Channel No.	
	Present	Proposed
Suring, Wisconsin	14-	-
Appleton, Wisconsin	32+	14-, 32+
Joliet, Illinois	14-	14+

#### Option 2

City	Channel No.	
	Present	Proposed
Suring, Wisconsin	14-	-
New London, Wisconsin	-	14-
Joliet, Illinois	14-	14+

13. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

14. Interested parties may file comments on or before **March 1, 1993**, and reply comments on or before **March 16, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows: James R. Bayes, Esq., Wayne D. Johnsen, Esq., Wiley Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.

15. Furthermore, **IT IS ORDERED** that the Secretary of the Commission **SHALL SEND** a copy of this *Notice of Proposed Rule Making* by **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**, to: David D. Oxenford, Esq. and

John K. Hane, Esq., Fisher, Wayland, Cooper and Leader, 1255 23rd Street, N.W., Suite 800, Washington, D.C. 20037-1125.

16. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

17. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be ex-

<sup>10</sup> Proposed coordinates for Channel 14 at New London are North Latitude 44-22-10 and West Longitude 88-37-40.

<sup>11</sup> The change in offset does not require a change in the reference coordinates for Joliet Channel 14, which are North Latitude 41-31-40 and West Longitude 88-04-55.

pected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.